

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**IN RE: NATIONAL PRESCRIPTION OPIATE
LITIGATION**

This document relates to: *Track Two Cases*

*Cabell County Commission v. AmerisourceBergen
Drug Corporation, et al.*
Case No. 1:17-op-45053

*City of Huntington, W.Va. v. AmerisourceBergen
Drug Corp., et al.*
Case No. 17-OP-45054

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**PLAINTIFFS CABELL COUNTY COMMISSION and CITY OF HUNTINGTON'S
NOTICE OF VOLUNTARY DISMISSAL**

Plaintiffs, CABELL COUNTY COMMISSION and CITY OF HUNTINGTON, by counsel, hereby voluntarily dismiss pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure of all claims asserted in the *Third Amended Complaint* (Doc. #2595) against severed defendants AmerisourceBergen Drug Corporation, Cardinal Health, Inc. and McKesson Corporation except for the following:

- A. Public Nuisance¹;

¹W. Va. Code § 7-1-3kk; W. Va. Code § 8-12-5(23). Plaintiffs' damages are limited to the "elimination of hazards to public health and safety and to abate or cause to be abated ... a public nuisance." Plaintiffs waive past damages for economic losses sustained by the CABELL COUNTY COMMISSION and CITY OF HUNTINGTON.

- B. Civil Conspiracy²;
- C. Joint Liability³; and
- D. Punitive Damages⁴.

Upon remand, Plaintiffs intend to request a bifurcated, non-jury trial pursuant to Rule 39(a)(1) of the Federal Rules of Civil Procedure where liability and causation would be determined.

Dated December 19, 2019

Respectfully submitted,

THE CITY OF HUNTINGTON

CABELL COUNTY COMMISSION

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² A civil conspiracy is not a per se, stand-alone cause of action; it is instead a legal doctrine under which liability for a tort may be imposed on people who did not actually commit a tort themselves but who shared a common plan for its commission with the actual perpetrator(s). *Dunn v. Rockwell*, 225 W. Va. 43, 689 S.E.2d 255, Syl. Pt. 9 (2009).

³ Joint liability may be imposed on “[a]ny party who acted in concert with another person as part of a common plan or design resulting in harm.” W.Va. Code § 55-7-24(b)(2).

⁴ An award of punitive damages may only occur in a civil action against a defendant if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others. W. Va. Code § 55-7-29.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 19, 2019, a copy of the foregoing **PLAINTIFFS CABELL COUNTY COMMISSION and CITY OF HUNTINGTON'S NOTICE OF VOLUNTARY DISMISSAL** has been filed electronically using the Court's CM/ECF system and will be served *via* the Court's CM/ECF filing system, which will send notification of such filing to the attorneys of record at their e-mail addresses on file with the Court.

/s/ Paul T. Farrell, Jr.

Paul T. Farrell, Jr.